United Nations AT/DEC/1144

Administrative Tribunal

Distr. Limited
30 January 2004

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1144

Case No. 1241 MILLER Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, President; Mr. Mayer Gabay, Vice-President; Mr. Spyridon Flogaitis;

Whereas at the request of Susan Miller, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 31 January 1999, and periodically thereafter until 31 January 2002.

Whereas, on 31 January 2002, the Applicant filed an Application, requesting the Tribunal, inter alia:

"10. ... [T]o order that:

(a) [The] Applicant be reinstated for a further two-year term retroactive to the date of her separation from service, 24 October 1997.

(b) [The] Applicant be compensated two-years' net base salary base pay plus appropriate allowances, including [United Nations] Joint Staff Pension Fund contributions, for moral and material injuries suffered and the jeopardy to [her] professional career

11. [To provide documents and to hold a hearing]."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 May 2002;

Whereas the Respondent filed his Answer on 31 May 2002;

Whereas the Applicant filed Written Observations on 10 October 2002;

Whereas, on 19 November 2002, the Respondent submitted an additional statement;

Whereas, on 7 November 2003, the Tribunal decided not to hold oral proceedings in the case;

Whereas, on 19 November 2003, the Respondent submitted an additional communication;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on a two-year fixed-term appointment as an Associate Proofreader, Conference Services Division, United Nations Office at Geneva (UNOG), at the P-2 level on 24 October 1993. The Applicant's appointment was extended for another two-year period expiring on 23 October 1997.

On 5 October 1995, the Applicant submitted a rebuttal to her performance evaluation report (PER) covering the period 24 October 1993 to 31 August 1995, questioning four "C" ratings. The Applicant finalized her selection of the members of the Rebuttal Panel in December 1997. In its report dated 10 May 1998, the Panel recommended upgrading all four ratings to "B". Subsequently, the Director, Conference Services Division, UNOG, accepted the Panel's recommendation and the Applicant's record was amended accordingly.

On 18 June 1997, the Applicant submitted a request for annual leave from 12 to 29 August 1997 which was approved on 19 June 1997. On 25 June 1997, the Applicant submitted a request for home leave, and, on 26 June, she requested that the period of her approved annual leave be considered as her 1997 home leave. On 4 July 1997, the Officer-in-Charge, Publishing Services, UNOG, advised the Deputy Chief, Personnel Administration Section, UNOG, that as the Applicant had less than six months before the end of her contract and her future contractual status had not yet been determined, her request for home leave had been approved on the understanding that, should her contract not be extended, she would be required to reimburse the costs of her home leave. On 8 July, the Applicant was so informed and was requested to confirm her agreement in writing, which she did, on 17 July.

On 5 September 1997, the Officer-in-Charge, Publishing Services, UNOG, informed the Personnel Administration Section, UNOG, that she did not intend to request the extension of the Applicant's fixed-term appointment due to expire on 23

October 1997. On 9 September 1997, the Applicant was informed that her fixed-term appointment would not be renewed.

On 7 October 1997, the Applicant requested the Secretary-General to review this decision.

On 9 October 1997, the Applicant filed before the Secretary of the Joint Appeal Board (JAB), a request for suspension of action.

On 15 October 1997, the Applicant submitted her case to the Panel on Discrimination and other Grievances, Geneva. On 16 October 1997, the Panel addressed a memorandum to the Director General, UNOG, recommending that the Applicant be granted a two-month extension in accordance with paragraph 15 of administrative instruction ST/AI/308/Rev.1 of 25 November 1983, to enable the Panel to conduct its investigation. In his reply of 22 October, the Director General stated that as the Panel had submitted no "element" establishing that there existed exceptional circumstances justifying such an extension of contract, he was not in a position to endorse the recommendation.

On 20 October 1997, the Under-Secretary-General for Internal Oversight Services wrote to the Applicant in connection with certain claims filed by her, advising her, inter alia, that the Office of Internal Oversight Services (OIOS) "*will* investigate reports from staff ... on mismanagment, misconduct and abuse of authority" and that any confusion over this issue was "merely a problem of communication"; that, in fact, OIOS had reviewed her claims but had determined that for an investigation to be conducted, she had to provide evidence with respect to how she had been personally affected by the alleged mismanagment; and, that OIOS had determined that no connection existed in relation to her contact with OIOS and the non-renewal of her fixed-term appointment. In her subsequent reply, the Applicant recalled that she had first contacted OIOS on 18 June 1997; noted that in the subsequent four months, despite several follow-up memoranda, none of the matters she brought to the attention of OIOS had been investigated; and, insisted that the lack of action on the part of OIOS had contributed to the non-renewal of her contract.

Also on 20 October, the JAB issued its report on the request for suspension of action. Finding no evidence of irreparable damage in the case, it made no recommendation in support of the request, and, on 21 October 1997, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to accept the JAB's recommendation.

On 23 October 2003, the Applicant separated form service.

On 24 December 1997, the Applicant lodged an appeal with the JAB on the merits. The JAB submitted its report on 14 May 1998. Its considerations, conclusions and recommendations, and special remark read, in part, as follows:

> "**Considerations**
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> ...
>
> 35. The Appellant's 1997 home leave approval involved an understanding, signed by the Appellant as early as July 1997, establishing the deduction of the Appellant's home leave travel should her contract not be renewed. The nature of this procedure is to clearly inform staff members of the possible consequences of their travel, if done prior to knowing whether their appointment is to be renewed or not. It is not to be viewed as a commitment for renewal and, in the Panel's opinion, it does not change the fact that employment with the Organization ceases on the expiration date of a fixed-term appointment.
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> 36. Furthermore, the Appellant relies on the fact that the same "routine procedure" took place in 1995. However, the Panel notes that in 1995, by memorandum 28 August, *i.e.* at least two weeks prior to her departure on home leave, the Appellant was informed that the prolongation of her contract was to be requested. No similar document existed for the 1997 home leave. The Panel is of the opinion that, in connection with her home leave, the Administration duly advised the Appellant who in turn took a decision and should bear the consequences of it.
>
> 37. With respect to the Appellant's claims in connection with delays on the evaluation of her performance and the implementation of the PAS, the Panel ... does not find that the difficulties encountered amount to a lack of due process. Furthermore, the Panel underscores ... efficient or outstanding performance do not create a legal expectancy of renewal.
>
> 38. With respect to the Appellant's claim of improper motive, prejudice and bad faith on the part of the Administration in connection with the non-renewal of her fixed-term appointment, the Panel ... considers that the Appellant has not submitted satisfactory and sufficient evidence in this connection. The Panel therefore finds no grounds to support the Appellant's claim.
>
> 39. With respect to the Appellant's claim in connection with the reason given ... for the non-renewal of her fixed-term appointment, the Panel makes the following observations. The Appellant was indeed given a reason by her supervisor, namely ...'failure to adapt to the office environment'. ... [T]he reason put forward by the Appellant's supervisor constitutes a managerial matter where the Panel cannot substitute its judgment for that of the supervisor.
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> 40. With respect to the Appellant's argument that the absence of an 'acceptable' reason justifying her non-renewal shows that her contacting OIOS is the primary ground for the contested administrative decision, the Panel finds no evidence supporting this claim and considers that filing a complaint with OIOS cannot be construed *per se* as a safeguard against the non-renewal of appointments.

41. Finally, with respect to the argument in connection with the recruitment of temporary staff, the Panel notes that 'if, on the expiry of the contract, the vacant post is filled by another person - whatever be the reason for such appointment - that cannot constitute an abuse or deviation of power".

**Conclusions and recommendations**

42. For the foregoing reasons, the Panel recommends to the Secretary-General that the present appeal be rejected.

**Special remark**

43. Although the file suggests the existence of interpersonal and managerial difficulties in the Appellant's section, it is not within the Panel's authority to look into those matters. In addition, the panel notes that a claim in that regard was presented to the Panel on Discrimination and other Grievances but, unfortunately, it appears no investigation took place.

44. ... [T]he Panel believes that the possible problems ... are worth being inquired into and recommends to the Secretary-general to undertake the necessary actions towards that end."

On 10 July 1998, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed her that the Secretary-General had decided to accept the Panel's recommendation, and, accordingly, to take no action in her case.

On 31 January 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The absence of an investigation into grievances filed while the Applicant was a staff member deprived her of an important protection and constituted a lack of due process.

2. The decision not to renew the appointment was based on a procedure that was not complete, fair, or reasonable; lacking in proper motive; and tainted by prejudice.

3. Proper procedures were not followed and this caused serious injury to the Applicant. Bad faith was exhibited in the administration of personnel policies and management of staff.

4. The JAB did not act as an independent and impartial tribunal, as specified in the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, when rejecting the appeal. Therefore its recommendation should not be considered valid.

Whereas the Respondent's principal contentions are:

1. The Applicant had neither the right nor the legal expectancy of continued employment with the Organization under her fixed-term appointment.

2. The decision not to renew the Applicant's fixed-term contract was not vitiated by bias or other extraneous factors.

3. The Applicant was not denied due process by the relevant bodies which considered her grievances.

The Tribunal, having deliberated from 23 October to 17 November 2003, now pronounces the following Judgement:

I. It is a well-established rule of the internal law of the United Nations that fixed-term contracts carry no expectancy of renewal. However, the Tribunal has consistently held that such an expectancy may be created by countervailing circumstances, such as violation of due process, arbitrariness or other extraneous motivation on the part of the Administration. (See Judgements No. 981, *Masri* (2000); No. 614, *Hunde* (1993).)

In the present case, the Administration would have acted within its discretion had it not based its decision not to renew on her supervisor's statement that she failed "to adapt to the office environment", which was communicated to the Applicant. Her post was not abolished at the expiration of her contract. On the contrary, she was immediately replaced by a temporary staff member - past retirement age and living in England - after the Applicant had been told that her offer to free-lance locally was rejected due to "no need".

II. The JAB did not go into the circumstances relating to the non-renewal of the Applicant's contract, as it considered them to be "managerial matters", not within its competence, and that it could not substitute its judgement for that of the Applicant's supervisor. The Tribunal cannot but completely disagree with the JAB's point of view. The Tribunal must now examine the issue, and in doing so, is not substituting its own judgment for that of the Administration. Indeed, the Tribunal is doing what is necessary to determine whether or not the contested decision was tainted by arbitrariness, lack of due process, discrimination, or some other improper motivation, and this can only be done by reviewing exactly those issues the JAB considered "managerial matters". As the Tribunal has held in Judgement No. 885, *Handelsman* (1998), the Respondent's exercise of his discretionary power in not extending a ...

contract must not be tainted by forms of abuse of power ..." In short, the reason advanced by the Administration for failure to renew a contract must of necessity have foundation in fact, and cannot be frivoulous.

III. The Tribunal is satisfied that the decision not to renew the Applicant's contract was the result of maneuvering by her second supervisor, who led the Administration to believe that she was, indeed, a "square peg in a round hole" and that the Administration would be much better off without her services. The second supervisor had, prior to the above machinations, acted improperly by lowering the ratings in the Applicant's PER for the period 24 October 1993 to 31 August 1995, given to her by her former (the first) supervisor, even though the first supervisor had been in charge for a period of 17 months and the second supervisor for only five months. The Applicant successfully rebutted that PER and her original ratings were restored. The Rebuttal Panel found that the second supervisor was unable to justify the lowering of the ratings in the PER. The reason advanced by the second supervisor, namely the Applicant's failure to "adapt to the office environment" was not considered sufficient or convincing.

IV. Moreover, the second supervisor's allegation, vague as it was, runs counter to the appraisal by the first supervisor, who affirmed that the Applicant treated her colleagues with respect, and by the fact that the Applicant's colleagues when questioned by the Rebuttal Panel effusively praised her work and inter-personal skills. Moreover, the Applicant was never given the opportunity to rebut the allegation, nor was it included in her final performance appraisal. In fact, the Applicant was never informed that she failed to adapt to the office environment or that that allegation had been identified as a possible cause for her non-renewal. The Tribunal is satisfied that due process of law was violated by the general lack of good faith demonstrated by the Administration in this respect.

V. The wrongs committed by the Administration do not stop there. The Applicant made two last-minute efforts to correct her situation immediately prior to the expiration of her contract. She filed a complaint with the OIOS claiming "mismanagement, waste of resources, abuse of authority misconduct and fraud as they pertained to her unit" which had a rather unorthodox follow up. At the suggestion of an OIOS investigator, they met in a bar in order for him to receive the Applicant's full report in confidence. Apparently, there was no furhter follow-up for months, the

Applicant was misled as to the real competence of the OIOS, and she was given the correct information by the Under-Secretary-General, OIOS, only two days before the expiration of her contract, when she had no possibility of continuing with her case.

The other effort was an appeal to the Panel on Discrimination and other Grievances. The Panel, in view of the very short term - one week - remaining for it to make an investigation, recommended a two-months extension of the Applicant's fixed-term contract. The Director General, UNOG, found that there were no "extraordinary circumstances" as required by ST/AI/308/Rev.1 and that the Applicant's "right to due process shall be fully respected and that she will be given access to all pertinent documents, regardless of her contractual status or of her location". The preliminary investigation was closed after the Applicant left the Organization.

The Tribunal finds that the lack of action on the part of the Administration on both counts indicates a desire to hasten the Applicant's departure from the Organization rather than to bring the ongoing investigations to a proper conclusion.

VI. The Tribunal also notes that the Applicant claims that she was unfairly requested to refund home-leave payments made by the Organization, on the ground that she did not continue in her post six months following her home leave, as required. The Tribunal concurs with the finding of the JAB that the Administration duly advised the Applicant who in turn took a decision and should now bear the consequences.

VII. In conclusion, the Tribunal finds that the procedural steps taken in order to reach the decision not to renew the Applicant's contract as well as the obstacles put in the way of concluding the investigations by the OIOS and the Grievance Panel constituted a violation of the Applicant's due process rights for which she must be compensated. The Tribunal also notes and supports the recommendation made by the JAB in this regard "that the possible problems in the [Applicant's] section are worth being inquired into" and that "the Secretary-General ... undertake the necessary actions towards that end".

VIII. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant compensation in the amount of six months' net base salary; and

2. Rejects all other pleas.

(*Signatures*)

Julio **Barboza**
President

Mayer **Gabay**
Vice-President

Spyridon **Flogaitis**
Member

New York, 17 November 2003

Maritza **Struyvenberg**
Executive Secretary

United Nations AT/DEC/1145

# Administrative Tribunal

Distr. Limited
30 January 2004

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1145

Case No. 1242: TABARI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Kevin Haugh, Vice-President, presiding; Mr. Spyridon Flogaitis; Ms. Jacqueline Scott;

Whereas, on 29 January 2002, Diab Khalil Tabari, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an Application containing pleas which read as follows:

"*Part II*

*Pleas*

1. Implement a *tentative* 25-20% salary increase until the pay policy and the salary survey issue is solved and until a new and clear one or more salary scales are established. ...

2. To establish a governing body for UNRWA from the donor countries to be funded by the donor countries themselves and to monitor and judge the acts of the Administration and the management of UNRWA.

3. To cancel the pay policy and salary surveys conducted by UNRWA and to follow the pay policy and salary surveys of [the United Nations Development Programme (UNDP)] with respect to local staff. ...

4. To restudy the whole Agency set up ... with the assistance of the Area Staff Union [(ASU)] ...

5. To establish transparent directives that are to be read in conformity with the rules and regulations. ...

6. To reach a Memorandum of Agreement that covers the above-mentioned points and to establish [a] Staff/Management consultation mechanism ...

7. To identify the actual percentage of increase and the time it was due from. Then to implement the actual increase and to pay lump sums from the retroactive payments due ...

8. A full scale investigation to be carried out on the Management of the Agency with the assistance of ASU ...

9. To pay [costs in the] amount of US$3,000 ..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 July 2002 and periodically thereafter until 31 January 2003;

Whereas the Respondent filed his Answer on 30 January 2003;

Whereas the Applicant filed Written Observations on 30 September 2003;

Whereas the facts in the case are as follows:

The Appellant joined UNRWA on a temporary indefinite appointment as an Area staff member in the capacity of Administrative Assistant "B", at the Grade 10, step 1 level, at Lebanon Field Office, effective 1 June 1989. On 1 September 2000 the Applicant was promoted to the post of Administrative Officer, Grade 14, in the Department of Education at the Lebanon Field Office.

On 21 August 1990, the Administration issued Area Staff Pay Policy A/103.1(2)-C.

In September 1998, the Agency conducted a salary survey in Lebanon, and in December, the Agency investigated the conditions of service for the Agency's Area staff in Lebanon. As a result, a recommendation was made for a salary increase as well as an increase in dependency allowances.

With effect from 1 March 1999, the Commissioner-General approved a revised salary scale and dependency allowance for Area staff members in the Lebanon Field. On 11 March 1999, the Commissioner-General advised all Area staff members in the Lebanon Field of the retrospective salary increases, explaining that, because of the large deficit in the current budget and ongoing austerity measures, Area staff salaries would be increased by varying percentages.

On 16 March 1999, the Chairman of the Area Staff Union (ASU) in Lebanon wrote to the Director of Administration and Human Resources, Gaza, (DAHR) on behalf of Area staff members, expressing dissatisfaction with the recently revised

salary scale. The Acting Director of Administration and Human Resources, Gaza, (A/DAHR) responded on 17 March 1999, explaining that the Agency had attempted to have a salary scale that compared favourably to that of the comparator, subject to financial means.

Following further correspondence on the matter, on 1 November 1999, the Agency met with the Inter Staff Union Conference (ISUC) at UNRWA Headquarters, Amman, to discuss the possible amendment of the Agency's Area Staff Pay Policy.

On 21 February 2000, the Applicant and seven colleagues wrote to the Director of UNRWA Affairs, Lebanon, seeking to appeal against "the current pay policy and results of the last salary surveys which should have been the subject of discussion and amendment during that meeting", and requesting his reply on the adoption of the "Fleming Principle" and applying the pay policy and salary surveys carried out at sister organizations in the Field. In his response of 24 February 2000, the Deputy Director of UNRWA Affairs, Lebanon, stated that the question of pay policy, salary surveys and "the Fleming Principle" was not a matter that could be usefully discussed at Field level and suggested that they request the chairman and executive council of the ASU to raise these matters with the ISUC.

On 1 March 2000, the Applicant and his colleagues submitted an appeal to the Joint Appeals Board (JAB) against the staff salary survey results and pay policy implemented by UNRWA.

Following an investigation in September-October 2000 of the conditions of service for the Agency's Area staff in Lebanon, the Commissioner-General informed all Area staff that the Lebanon Field Area staff salaries would be increased by varying percentages on grade and step, effective 1 October 2000.

The JAB submitted its report on 22 February 2001. It concluded that the appeal did not invoke the competence of the Board as the decision appealed from did not constitute any non-observance of the Appellant's letter of appointment within the meaning of Area staff regulation 11.1(A). The Board therefore unanimously recommended that the appeal was not receivable. On 31 March 2001, the Commissioner-General transmitted a copy of the report to the Applicant and advised him that he agreed with the Board's determination that it was not competent to consider the case, and that, accordingly, he dismissed his appeal on that basis.

On 14 February 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The case is receivable.

2. The Agency's decision to unilaterally change the pay policy in 1990, without the consent of the ISUC, violated his rights.

Whereas the Respondent's principal contentions are:

1. The Applicant has failed to show any basis upon which the JAB, or indeed the Tribunal, should have considered his list of pleas. His Application should be dismissed for lack of jurisdiction.

2. The Applicant filed his Application with the Tribunal on 29 January 2002, not within ninety days, but some nine to ten months later. Thus, the Application is not receivable.

3. The Applicant has not asserted, let alone produced evidence, that the Respondent acted with improper motives in respect of the allocation of funds.

The Tribunal, having deliberated from 24 October to 17 November 2003, now pronounces the following Judgement:

I. Since the Applicant brings these proceedings as a staff member of the Agency, his right of access to its internal justice system and to this Tribunal is, inter alia, governed by Area staff regulation 11.1(A) and by the Statute of the Administrative Tribunal.

Under Area staff regulation 11.1(A) the Respondent was required to establish a JAB with staff participation *"to advise him in case of any appeal by a staff member against an administrative decision alleging the non-observance of his or her* ***terms of appointment, including all pertinent regulations and rules or against disciplinary action****"*.

The Administrative Tribunal is, under article 1 of its Statute, "competent to hear and pass judgement upon applications alleging non-observance of contracts of staff members" or "terms of appointment of such staff members". The said article defines "contracts" and "terms of appointment" to include all pertinent regulations and rules in force at the time of the alleged non-observance. Article 3 of the Statute provides that in the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal.

II. In light of the provisions outlined above, it can be seen that, in order for the JAB or the Tribunal to enjoy jurisdiction in any proceedings before it, the Applicant or

staff member seeking recourse must seek to establish a breach of the terms of his appointment or the denial of some right thereunder or the breach of some regulation or rule affecting him as a staff member or the breach of a right by reason of disciplinary action taken against him. Unlike a Staff Association or a Staff Union, neither a JAB nor the Tribunal is a vehicle available to a staff member to be used to lobby management or to seek to persuade management to effect what the staff member would perceive to be improvements in his working conditions or the terms of his employment, unless that staff member seeks to establish that the matter of which he complains arises from the non-observance of the terms of his appointment or that it arises from the infringement or denial of some employment right. Both the JAB and the Tribunal are parts of the justice system whose primary objective is to right employment wrongs and to provide remedies to staff members who establish that they have been wronged in relation to a condition of employment or been denied an employment right.

III. In these proceedings, in essence, the Applicant seeks to challenge the provisions of a revised salary scale implemented for staff members in Lebanon with effect from 1 March 1999 and he seeks what are essentially orders from the Tribunal to direct the management of the Agency to replace that policy with a pay policy as adopted by the United Nations Development Programme (UNDP) and to implement various measures which he asserts or believes would be beneficial to the Agency as a whole and to himself and other staff members in particular. These measures include an order directing management of the Agency to implement an interim salary increase to be paid until other "reforms" proposed by him have been implemented. Many of those other proposed "reforms" are of a drastic and far-reaching nature and include, for example, the Applicant's proposal that the UNRWA donor countries establish and finance a governing body for the Agency, which would monitor and judge the acts of the Administration and the management of the Agency.

It must be now noted that the Applicant fails to advance any cogent argument or to seek to establish that the matters of which he complains have breached any rights enjoyed by him as a staff member or that arise from the non-observance of the terms of his appointment. He further fails to identify any rule or regulation pertaining to his appointment which he claims to have been breached or infringed. In the proceedings before the JAB, the Respondent had contended that, in the absence of such submissions, the JAB had no jurisdiction to embark upon the Applicant's appeal thereto. The Respondent had argued that what was essentially a lobbying exercise or an exercise which merely sought an improvement in the Applicant's and his fellow

staff members' conditions in relation to matters such as those complained of in the Appeal were matters appropriate for representations by the Area Staff Associations to Management rather than matters for consideration by the JAB. These submissions are again made by the Respondent in relation to the Applicant's proceedings before this Tribunal. The Respondent observes that the Applicant has failed to identify any alleged non-observance of what he alleges to be the terms of his appointment or to identify any rule or regulation allegedly breached. The JAB rejected the Applicant's appeal on the grounds that it lacked jurisdiction because the appeal was not made against an administrative decision "*alleging non-observance of [the Applicant's] terms of appointment including all pertinent regulations and rules*".

The Applicant has still failed to confront these submissions head on by seeking to allege or identify such a breach. Instead of seeking to establish such non-observance, he seeks to establish jurisdiction by a submission that, whilst

> "*it is true that representatives of the Area Staff Associations normally address these issues in their discussions with senior management; however, they do that on behalf of staff which means that if an individual staff member ... has got concrete comments against the Administrative decisions reached and conveyed to the Associations on a subject that would affect staff in general and since, I, in particular [am] one of the staff; this harm would lead to subsequently giving me the right to appeal against such ... decisions*".

The Tribunal is uncertain as to what this submission is intended to mean. It suggests that the Applicant claims that as a staff member whose conditions of service are governed by matters which had been discussed between the appropriate Area Staff Association and Management, since he claims to have concrete comments to make relating to management policy which has been so discussed, he has a right of recourse to the JAB to express his views on that policy itself and on the manner in which it is being implemented. The Tribunal is satisfied that any such submission is wholly misconceived and must be rejected. The Tribunal repeats that some non-observance or breach of a right relating to the terms of one's employment must be identified in order to found jurisdiction and no such breach has been alleged or identified in this case.

IV. Neither the JAB nor the Tribunal has any function in what are essentially the Applicant's attempts to secure a management role or to shape policy. Neither the JAB nor the Tribunal constitutes a lobbying body and neither has any role as management consultant or management advisor. In further support of his contention in relation to jurisdiction, the Applicant now further seeks to invoke Judgement No. 901, *Abu Salem*

(1998) arguing that it is somehow analogous to the instant case and that it supports the general proposition already referred to. The Tribunal finds no such support from *Abu Salem*. In that case the Applicant had argued that the Agency was in breach of its own obligations to seek to pay its staff rates comparable to the rates paid by its comparator. It had such a mandatory obligation, subject to having sufficient available funds. The Applicant Abu Salem had claimed that the Agency was in breach of its obligations to him (and to others) in failing to honour said policy. Thus, he alleged he was suffering a breach of one of his employment conditions and a breach of one of his terms of employment. His claim was admissible in so far as it related to him, although rejected as a class action. In the event, he failed to establish a breach of the policy and the claim was rejected on its merits. No comparable allegation has been made in these proceedings nor has any claim of breach of any identifiable right been made. In these circumstances the Tribunal is satisfied that neither the JAB nor the Tribunal has any jurisdiction in relation to these proceedings.

V. Accordingly, the claim is rejected in its entirety on jurisdictional grounds.

(*Signatures*)

Kevin **Haugh**
Vice-President, presiding

Spyridon **Flogaitis**
Member

Jacqueline R. **Scott**
Member

New York, 17 November 2003

Maritza **Struyvenberg**
Executive Secretary